

## **SUBCHAPTER B : FINANCIAL ASSURANCE REQUIREMENTS FOR CLOSURE**

### **§37.100. Applicability.**

An owner or operator required by this chapter to establish financial assurance for the closure of a facility must, at a minimum, meet the requirements of this subchapter.

Adopted December 4, 1996

Effective December 30, 1996

### **§37.101. Drawing on the Financial Assurance Mechanisms.**

The executive director may draw on the financial assurance mechanism(s) when an owner or operator who is required to comply with this chapter has:

- (1) failed to perform closure when required to do so; or
- (2) failed to provide an alternate financial assurance mechanism; or
- (3) failed to provide continuous financial assurance coverage.

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### **§37.111. Continuous Coverage Required.**

The owner or operator of a facility required by this chapter to provide evidence of financial responsibility for closure shall provide continuous financial assurance coverage until the executive director provides written consent to termination in accordance with §37.61 of this title (relating to Termination of Mechanisms).

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### **§37.121. Closure Cost Estimate.**

The owner or operator of each facility required by this chapter to provide evidence of financial responsibility for closure must establish financial assurance in an amount no less than the approved closure cost estimate.

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### **§37.131. Annual Inflation Adjustments to Closure Cost Estimates.**

The owner or operator must adjust the current closure cost estimate for inflation within 60 days prior to the anniversary date of the first establishment of the financial assurance mechanism. For owners or operators using the financial test or corporate guarantee, the current closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the executive director as specified in this chapter. The adjustment must be made as specified in paragraphs

(1) and (2) of this section, using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the United States Department of Commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the current closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted cost estimate by the latest inflation factor.

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**§37.141. Increase in Closure Cost Estimate.**

Whenever the closure cost estimate increases to an amount greater than the amount being provided in the financial assurance mechanism(s) as a result of changes in closure activities, the owner or operator, within 30 days after the increase, must either cause the amount of the mechanism to be increased and submit evidence of such increase to the executive director, or obtain additional financial assurance in accordance with Subchapter C of this chapter (relating to Financial Assurance Mechanisms for Closure) to cover the increase and receive approval by the executive director.

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**§37.151. Decrease in Closure Cost Estimate.**

Whenever the closure cost estimate decreases to an amount less than the amount being provided in the financial assurance mechanism(s) as a result of changes in closure activities, the owner or operator may request a reduction in the amount of the financial assurance mechanism in writing to the executive director. Following written approval by the executive director, the amount of the mechanism may be reduced to the amount of the current closure cost estimate.

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**§37.161. Establishment of a Standby Trust.**

An owner or operator who uses a surety bond or an irrevocable standby letter of credit to satisfy the requirements of this chapter must establish a standby trust fund. Under the terms of the bond or letter of credit, all payments made under the bond or all amounts paid pursuant to a draft by the executive director shall be deposited by the surety or issuing institution directly into the standby trust fund in accordance with instructions from the executive director. This standby trust fund must meet the requirements of the trust fund specified in §37.201 of this title (relating to Trust Fund for Closure), except that:

(1) an originally signed duplicate of the trust agreement must be submitted to the executive director with the surety bond or irrevocable standby letter of credit; and

(2) until the standby trust fund is funded pursuant to the requirements of this chapter, the following are not required by this section:

- (A) payments into the trust fund as specified in §37.201 of this title;
- (B) updating of Schedule A of the trust agreement to show current closure cost estimates;
- (C) annual valuations as required by the trust agreement; and
- (D) notices of nonpayment as required by the trust agreement.

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